



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LOUIS H REENS
ST ONGE STEWARD JOHNSTON & REENS
986 BEDFORD STREET
STAMFORD CT 06905-5619

In re Application of:
Lemont, Andrew I. et al
Serial No.: 09/208,185
Filed: Dec. 9, 1998
Docket: 01634-P0026C

Title: ACTIVE HEAT SINK STRUCTURE
WITH FLOW AUGMENTING RINGS
AND METHOD FOR REMOVING HEAT

Decision on Petition

This is a decision on the petition filed September 18, 2000 requesting the holding of abandonment mailed July 17, 2000 be withdrawn. This petition is being considered pursuant to 37 CFR § 1.181. No fee is required.

The petition is dismissed.

The application was held abandoned for failure to timely respond to the Office Action mailed on Dec. 10, 1999. Notice of abandonment was mailed on Jul. 17, 2000.

The application was held abandoned for failure to timely and properly reply to the FINAL Office action mailed Dec. 10, 1999. The Office Action set a three (3) month statutory period for reply. On Jun. 12, 2000 with a certificate of mailing dated Jun. 8, 2000, the applicant filed a response with a terminal disclaimer to obviate the obviousness-type double patenting rejection and thereby the final rejection. However, the terminal disclaimer filed on Jun. 12, 2000 was not approved because the filing date was incorrectly stated. The applicant was advised such error in the advisory action of Jun. 23, 2000. On Jul. 14, 2000, the applicant filed a corrected terminal disclaimer. Subsequently, the notice of abandonment was sent on Jul. 17, 2000 because the proper terminal disclaimer was filed outside of the six month time period after the final rejection (35 U.S.C. 133¹). The present application became abandoned on Jun. 11, 2000. Notice of abandonment was mailed on Jul. 17, 2000.

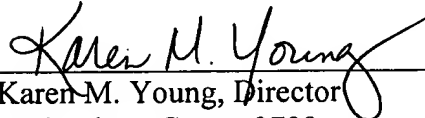
¹ 35 U.S.C. 133 Time for prosecuting application. Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable

Petitioner asserts that the terminal disclaimer was proper on its face since the application number was correctly identified. The filing date of the patent application in question was correctly identified in the caption part of the disclaimer, which was drafted in compliance with PTO/SB/26B. This argument is not persuasive because the body of the terminal disclaimer clearly provided a filing date reads "998/12/09" which is incorrect. Therefore, it was unacceptable. Petitioner further argues that it seems unfair to punish applicants for something that cannot be even characterized as a clerical mistake since there is no established standard with which the terminal disclaimer should comply. The standard of terminal disclaimer is clearly laid out in the USPTO Form PTO/SB/25. The body of the terminal disclaimer is the heart of the document. This is the reason that it is so critical to provided correct information in a terminal disclaimer to obviate the rejection stated in the Office action of Dec. 10, 1999. The alleged punishment has nothing to do with the abandonment. The reason the case is held abandoned is based on the statute of 35 U.S.C. 133.

As the applicant has not timely filed a correct terminal disclaimer to the Office action of Dec.. 10, 1999, the abandonment remains. This application became abandoned in accordance 35 U.S.C. 133.

In view of the above, the holding of abandonment notice mailed July 17, 2000 remains. The applicant may wish to consider filing a petition to revive under 37 CFR § 1.137. The rules and MPEP sections cited may be found on the USPTO website at: www.uspto.gov Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner at (571)-272-4856

PETITION DISMISSED



Karen M. Young, Director
Technology Center 3700